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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,501	06/26/2003	Janice A. Jerdan	2422 US	6284

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EXAMINER	
FAY, ZOHREH A	
ART UNIT	**PAPER NUMBER**
1618	

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/606,501
Filing Date: June 26, 2003
Appellant(s): JERDAN ET AL.

Teresa J. Schultz
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 13, 2006 appealing from the Office action mailed July 14, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Penn et al. "The effect of an angiostatic steroid in a neovascularization in a rat model of retinopathy of prematurity", Invest. Ophthalmol. Vis. Science, 2001, Vol. 42:283-90.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 2, 4-6, 12-14 and 16-18 are rejected under 35 U.S.C. 103 as being unpatentable over Penn et al. and Yaccobi (U.S. Patent 6,413,540).

Penn et al. teach the use of the claimed compound, anecortave acetate for the inhibition of angiogenesis of ocular conditions, such as macular degeneration. See the entire abstract. Yaccobi teaches the use of a device, which can be implanted into the eye for the drug delivery purposes. The use of the claimed compound anecortave acetate is taught by the above reference. See claim 11. The treatment of macular degeneration is one of the conditions the claimed device is used for. See column 2, line 54-67. The above references differ from the claimed invention in the prevention of loss of vision associated with AMD, the inhibition of lesion growth and the inhibition of blood vessel growth associated with AMD. It would have been obvious to a person skilled in the art to use the claimed compound for the prevention and inhibition of disorders associated with AMD, considering that relied upon references teach the use of such agent for the treatment of macular degeneration.

One skilled in the art would have been motivated to employ the teachings of the above references, since they relate to the use of the claimed compound, anecortave acetate for the treatment of AMD. To use a compound being effective for the treatment

of AMD and use it for the prevention or inhibition of symptoms associated with AMD is considered to be within the skill of the artisan in the absence of evidence to the contrary. Applicant has presented no evidence to establish the unexpected or unobvious nature of the claimed invention, and as such, claims 1, 2, 4-6, 12-14 and 16-18 are properly rejected under 35 U.S.C. 103.

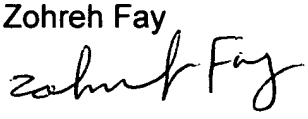
(10) Response to Argument

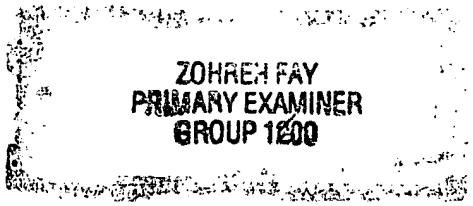
Appellant's arguments and remarks have been carefully considered, but are not deemed to be persuasive. Appellant alleges criticality to the differences in concentrations and animal model of prior art instead of the human model of the instant application. The allegation is not well taken. Appellant is reminded that the rejection is an obviousness rejection and anticipation. Animal models are routinely used as preliminary study models for human use. The determination of optimum proportions or amounts and route of administration is considered to be within the skill of the artisan in the absence of evidence to the contrary. The use of a composition known for treating macular degeneration and use it for maintaining visual acuity associated with macular degeneration, inhibiting blood vessel growth associated with macular degeneration and inhibiting lesion growth associated with macular degeneration is considered to be the inherent property of such composition. The Exhibit A submitted by the appellant has been considered. Such Exhibit show the efficacy of anecortave acetate versus placebo treatment for maintenance of visual acuity and the inhibition of lesion growth. Such showing demonstrate the efficacy of the claimed compound, but does not overcome the obviousness rejection.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Zohreh Fay





Conferees:

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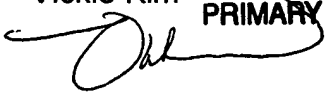

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